

NONPROFIT DIRECTORS LIABILITY

SEC. 1. The Legislature finds and declares that the services of directors and officers of nonprofit corporations are critical to the efficient conduct and management of the public service and charitable affairs of the people of California. The willingness of individuals to offer their services has been deterred by a perception that their personal assets are at risk for these activities. The unavailability and unaffordability of appropriate liability insurance makes it difficult for these corporations to protect the personal assets of their decisionmakers with adequate insurance. It is the public policy of this state to provide incentive and protections to the individuals who perform these important functions.

SEC. 2. Section 5047.5 of the Corporations Code is amended to read:

5047.5 (a) The Legislature finds and declares that the services of directors and officers of nonprofit corporations who serve without compensation are critical to the efficient conduct and management of the public service and charitable affairs of the people of California. The willingness of volunteers to offer their services has been deterred by a perception that their personal assets are at risk for these activities. The unavailability and unaffordability of appropriate liability insurance makes it difficult for these corporations to protect the personal assets of their volunteer decision makers with adequate insurance. It is the public policy of this state to provide incentive and protection to the individuals who perform these important functions.

(b) Except as provided in this section, no cause of action for monetary damages shall arise against any person serving without compensation as a director or officer of a nonprofit corporation subject to Part 2 (commencing with Section 5110), Part 3 (commencing with Section 7110), or Part 4 (commencing with Section 9110) of this division on account of any act or omission occurring (1) within the scope of that person's duties as a director acting as a board member, or within the scope of that person's duties as an officer acting in an official capacity; (2) in good faith; (3) in a manner that the person believes to be in the best interest of the corporation; and (4) is in the exercise of his or her policymaking judgment.

(c) This section shall not limit the liability of a director or officer for any of the following:

- (1) Self-dealing transactions, as described in Sections 5233 and 9243.
- (2) Conflicts of interest, as described in Section 7233.
- (3) Actions described in Section 5237, 7936, and 9245.
- (4) In the case of a charitable trust, an action or proceeding against a trustee brought by a beneficiary of that trust.
- (5) Any action or proceeding brought by the Attorney General.
- (6) intentional, wanton, or reckless acts, gross negligence, or an action based on fraud, oppression or malice.
- (7) Any action brought under Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code.

(d) This section only applies to nonprofit corporations organized to provide religious, charitable, literary, educational, scientific, social, or other forms of public service that

are exempt from federal income taxation under Section 501(c)(3), or 501(c)(6) of the Internal Revenue Code.

(e) This section applies only if the nonprofit corporation maintains a ~~general~~ liability insurance policy with an amount of coverage of at least the following amounts:

(1) If the corporation's annual budget is less than fifty thousand dollars (\$50,000) the minimum required amount is five hundred thousand dollars (\$500,000).

(2) If the corporation's annual budget equals or exceeds fifty thousand dollars (\$50,000), the minimum required amount is one million dollars (\$1,000,000).

This section applies only if the claim against the director or officer may also be made directly against the corporation and a ~~general~~ liability insurance policy is in force both at the time of injury and at the time the claim against the corporation is made, so that a policy is applicable to the claim. If a ~~general~~ liability policy is found to cover the damages caused by the director or officer, no cause of action as provided in this section shall be maintained against the director or officer.

(f) For purposes of this section, the payment of actual expenses incurred in attending meetings or otherwise in the execution of the duties of a director or officer shall not constitute compensation.

(g) Nothing in this section shall be construed to limit the liability of a nonprofit corporation for any negligent act or omission of a director, officer, employee, agent, or servant occurring within the scope of his or her duties.

(h) This section does not apply to any corporation that unlawfully restricts membership, services, or benefits conferred on the basis of race, religious creed, color, national origin, ancestry, sex, marital status, disability, political affiliation, or age.

(i) This section does not apply to any volunteer director or officer who receives compensation from the corporation in any other capacity, including, but not limited to, as an employee.

SEC. 3. Section 5132 of the Corporations Code is amended to read:

5132. (a) The articles of incorporation may set forth any or all of the following provisions, which shall not be effective unless expressly provided in the articles:

(1) A provision limiting the duration of the corporation's existence to a specified date.

(2) In the case of a subordinate corporation instituted or created under the authority of a head organization a provision setting forth either or both of the following:

(i) That the subordinate corporation shall dissolve whenever its charter is surrendered to, taken away by, or revoked by the head organization granting it.

(ii) That in the event of its dissolution pursuant to an article provision allowed by subdivision (a), paragraph (2), clause (i), of this section, or, in the event of its dissolution for any reason, any assets of the corporation after compliance with the applicable provisions of Chapters 15 (commencing with Section 6510), 16 (commencing

with Section 6610), and 17 (commencing with Section 6710) shall be distributed to the head organization.

(3) A provision authorizing, whether by bylaw, agreement, or otherwise, the indemnification of agents (as defined in Section 5238) in excess of that expressly permitted by Section 5238, for those agents of the corporation for breach of duty to the corporation, provided, however, that the provision may not provide for any such excess indemnification of any director for any acts or omissions or transactions from which a director may not be relieved of liability as set forth in paragraph (a)(4), below.

(4) Provisions eliminating or limiting the personal liability of a director for monetary damages in an action brought by or in the right of the corporation for breach of the person's duties to the corporation, under Section 5231, provided, however, that (A) such a provision may not eliminate or limit the liability of directors (i) for acts or omissions that involve intentional misconduct or a knowing and culpable violation of law, (ii) for acts or omissions that a director believes to be contrary to the best interests of the corporation or that involve the absence of good faith on the part of the director, (iii) for any transaction from which a director derived an improper personal benefit, (iv) for acts or omissions that show a reckless disregard for the director's duty to the corporation in circumstances in which the director was aware, or should have been aware, in the ordinary course of performing a director's duties, of a risk of serious injury to the corporation, (v) for acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of the director's duty to the corporation, (vi) under Sections 5233 or 5237(a), or (vii) for acts, transactions or omissions which are the subject of an action brought by the Attorney General or a person granted relator status by the Attorney General as described in Section 5238(c), and (B) no such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.

(b) Nothing contained in subdivision (a) shall affect the enforceability, as between the parties thereto, of any lawful agreement not otherwise contrary to public policy.

(c) The articles of incorporation may set forth any or all of the following provisions:

(1) The names and addresses of the persons appointed to act as initial directors.

(2) The classes of members, if any, and if there are two or more classes, the rights, privileges, preferences, restrictions and conditions attaching to each class.

(3) A provision which would allow any member to have more or less than one vote in any election or other matter presented to the members for a vote.

(4) Any other provision not in conflict with law, for the management of the activities and for the conduct of the affairs of the corporation, including any provision which is required or permitted by this part to be stated in the bylaws.

SEC. 4. Section 5132.5 is added to the Corporations Code to read:

5132.5. (a) If the articles of a corporation include a provision reading substantially as follows: "The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law." the corporation shall be considered to have adopted a provision as authorized by paragraph (4) of subdivision (a) of Section 5132 and more specific wording shall not be required.

(b) This section shall not be construed as setting forth the exclusive method of adopting an article provision as authorized by paragraph (4) of subdivision (c) of section

5132.

SEC. 5. Section 5231 of the Corporations Code is amended to read:

5231. (a) A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(b) In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;

(2) Counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence; or

(3) A committee of the board upon which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence;

so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

(c) Except as provided in Section 5233, a person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge the person's obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which a corporation, or assets held by it, are dedicated. In addition, the liability of a director for monetary damages may be eliminated or limited in a corporation's articles to the extent provided in paragraph (4) of subdivision (a) of Section 5132.

SEC. 6. Section 5231.5 is added to the Corporations Code to read:

5231.5. (a) Except as provided in this subdivision, no person shall bring an action against a director or officer of a nonprofit corporation which is subject to this part or to similar laws of any other state, and which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, based on violation of the duties set forth in section 5231, 5233 or 5237, or based on any other act or omission by a person arising out of, or reasonably believed to be in the course of his or her capacity as a director or officer of a nonprofit corporation. This subdivision shall not apply to actions brought by:

(1) The corporation, or a member pursuant to Section 5710.

(2) A director of the corporation.

(3) An officer of the corporation.

(4) The Attorney General or any person granted relator status by the Attorney General.

(5) Any governmental agency pursuant to any other provision of law.

(b) Notwithstanding subdivision (a), if a person not listed in subdivision (a) has a claim against a director or officer of the corporation but does not also have a similar claim against the corporation, arising out of the transaction or occurrence that is the subject matter of the claim against the director or officer, then that person may bring an action on the claim against the director or officer.

(c) This section is not intended to protect an individual from liability for his or her acts taken outside the course and scope of his or her duties as an officer or director of a nonprofit public benefit corporation.

(d) In order to ensure a source of recovery for the claims against the corporation pursuant to subdivision (a), subdivision (a) shall apply only if the corporation maintains a liability insurance policy so that it has available coverage in at least the following amounts:

(1) If the corporation's annual budget is less than fifty thousand dollars (\$50,000), the minimum required amount shall be five hundred thousand dollars (\$500,000).

(2) If the corporation's annual budget equals or exceeds fifty thousand dollars (\$50,000), the minimum required amount shall be one million dollars (\$1,000,000).

Without limitation, insurance acquired pursuant to subdivision (b) of Section 5005.1 shall satisfy this requirement.

(e) Nothing in this section shall be deemed to excuse an insurer from its obligations to a corporation by reason of the release of liability of a director or officer pursuant to subdivision (a).

(f) This section shall apply only to causes of action arising on or after January 1, 1997. The enactment of this section shall not be considered in determining any person's liability for a cause of action which arose prior to January 1, 1997, nor shall the repeal of Sections 5239 and 5047.5, and Section 425.15 of the Code of Civil Procedure be taken into account in determining any person's liability for a cause of action which arose at any time.

SEC. 7. Section 5238 of the Corporations Code is amended to read:

5238. (a) For the purposes of this section, "agent" means any person who is or was a director, officer, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee or agent of a foreign or domestic corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and "expenses" includes without limitation attorneys' fees and any expenses of

establishing a right to indemnification under subdivision (d) or paragraph (3) of subdivision (e).

(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation to procure a judgment in its favor, an action brought under Section 5233, or an action brought by the Attorney General or a person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust) by reason of the fact that such person is or was an agent of the corporation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

(c) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action by or in the right of the corporation, or brought under Section 5233, or brought by the Attorney General or a person granted relator status by the Attorney General for breach of duty relating to assets held in charitable trust, to procure a judgment in its favor by reason of the fact that such person is or was an agent of the corporation, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith, in a manner such person believed to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made under this subdivision for any of the following:

(1) In respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation in the performance of such person's duty to the corporation, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses ~~which such to the extent that the court shall determine;~~

(2) Of amounts paid in settling or otherwise disposing of a threatened or pending action, ~~with or without court approval; or.~~

(3) Of expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval unless it is settled with the approval of the Attorney General.

(d) To the extent that an agent of a corporation has been successful on the merits in defense of any proceeding referred to in subdivision (b) or (c) or in defense of any claim, issue or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

(e) Except as provided in subdivision (d), any indemnification under this section shall be made by the corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in subdivision (b) or (c), by any of the following:

(1) A majority vote of a quorum consisting of directors who are not parties to such proceeding;

(2) Approval of the members (Section 5034), with the persons to be indemnified not being entitled to vote thereon; or

(3) The court in which such proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney or other person is opposed by the corporation.

(f) Expenses incurred in defending any proceeding may be advanced by the corporation prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount ~~unless~~ if it shall be determined ultimately that the agent is not entitled to be indemnified as authorized in this section.

(g) ~~No provision made by a corporation to indemnify its or its subsidiary's directors or officers for the defense of any proceeding, whether contained in the articles, bylaws, a resolution of members or directors, an agreement or otherwise, shall be valid unless consistent with this section.~~ The indemnification provided by this section shall not be deemed exclusive of any additional rights to which those seeking indemnification for breach of duty to the corporation while acting in the capacity of a director or officer of the corporation to the extent the additional rights to indemnification are authorized in an article provision adopted pursuant to paragraph (3) of subdivision (a) of Section 5132. The indemnification provided by this section for acts, omissions, or transactions while acting in the capacity of, or while serving as, a director or officer of the corporation but not involving breach of duty to the corporation shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any other statute or under any bylaw, agreement, vote of members or disinterested directors or otherwise, to the extent the additional rights to indemnification are authorized in the articles of the corporation. An article provision authorizing indemnification "in excess of that otherwise permitted by Section 5238" or "to the fullest extent permissible under California law" or the substantial equivalent thereof shall be construed to be both a provision for additional indemnification for breach of duty to the corporation as referred to in, and with the limitations required by paragraph (3) of subdivision (a) of Section 5132 and a provision for additional indemnification as referred to in the second sentence of this subdivision. The rights to indemnity hereunder shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person. Nothing contained in this section shall affect any right to indemnification to which persons other than such the directors and officers may be entitled by contract or otherwise.

(h) No indemnification or advance shall be made under this section, except as provided in subdivision (d) or paragraph (3) of subdivision (e), in any circumstance where it appears:

(1) That it would be inconsistent with a provision of the articles, bylaws, a resolution of the members or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceedings in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(2) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

(i) A corporation shall have power to purchase and maintain insurance on behalf

of any agent of the corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not the corporation would have the power to indemnify the agent against such liability under the provisions of this section; provided, however, that a corporation shall have no power to purchase and maintain such insurance to indemnify any agent of the corporation for a violation of Section 5233. Without limitation, such insurance may be purchased as authorized by Section 5005.1.

(j) This section does not apply to any proceeding against any trustee, investment manager or other fiduciary of an employee benefit plan in such person's capacity as such, even though such person may also be an agent as defined in subdivision (a) of the employer corporation. A corporation shall have power to indemnify such trustee, investment manager or other fiduciary to the extent permitted by subdivision (f) of Section 207.

SEC. 8. Section 7132 of the Corporations Code is amended to read:

7132. (a) The articles of incorporation may set forth any or all of the following provisions, which shall not be effective unless expressly provided in the articles:

(1) A provision limiting the duration of the corporation's existence to a specified date.

(2) A provision conferring upon the holders of any evidences of indebtedness, issued or to be issued by a corporation the right to vote in the election of directors and on any other matters on which members may vote under this part even if the corporation does not have members.

(3) A provision conferring upon members the right to determine the consideration for which memberships shall be issued.

(4) In the case of a subordinate corporation instituted or created under the authority of a head organization, a provision setting forth either or both of the following:

(i) That the subordinate corporation shall dissolve whenever its charter is surrendered to, taken away by, or revoked by the head organization granting it.

(ii) That in the event of its dissolution pursuant to an article provision allowed by subdivision (a), paragraph (4), clause (i), of this section, or, in the event of its dissolution for any reason, any assets of the corporation after compliance with the applicable provisions of Chapters 15 (commencing with Section 8510), 16 (commencing with Section 8610), and 17 (commencing with Section 8710) shall be distributed to the head organization.

(5) Provisions eliminating or limiting the personal liability of a director for monetary damages in an action brought by or in the right of the corporation for breach of the person's duties to the corporation and its members under Section 7231, provided, however, that (A) such a provision may not eliminate or limit the liability of a director (i) for acts or omissions that involve intentional misconduct or a knowing and culpable violation of law, (ii) for acts or omissions that a director believes to be contrary to the best interests of the corporation or its members or that involve the absence of good faith on the part of the director, (iii) for any transaction from which a director derived an improper personal benefit, (iv) for acts or omissions that show a reckless disregard for the director's duty to the corporation or its members in circumstances in which the director was aware, or should have been aware, in the ordinary course of performing a director's duties, of a risk of serious injury to the corporation or its members, (v) for acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of the director's duty to the corporation or its members, or

(vi) under Section 7233, or Section 7236(a) and (B) no such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.

(6) A provision authorizing, whether by bylaw, agreement, or otherwise, the indemnification of agents (as defined in Section 7237) in excess of that expressly permitted by Section 7237, for those agents of the corporation for breach of duty to the corporation and its members, provided, however, that the provision may not provide for any such indemnification of any director for any acts or omissions or transactions from which a director may not be relieved of liability as set forth in paragraph (5), above.

(b) Nothing contained in subdivision (a) shall affect the enforceability, as between the parties thereto, of any lawful agreement not otherwise contrary to public policy.

(c) The articles of incorporation may set forth any or all of the following provisions:

(1) The names and addresses of the persons appointed to act as initial directors.

(2) Provisions concerning the transfer of memberships, in accordance with Section 7320.

(3) The classes of members, if any, and if there are two or more classes, the rights, privileges, preferences, restrictions and conditions attaching to each class.

(4) A provision which would allow any member to have more or less than one vote in any election or other matter presented to the members for a vote.

(5) Any other provisions not in conflict with law, for the management of the activities and for the conduct of the affairs of the corporation, including any provision which is required or permitted by this part to be stated in the bylaws.

SEC. 9. Section 7132.5 is added to the Corporations Code to read:

7132.5. (a) If the articles of a corporation include a provision reading substantially as follows: "The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law." the corporation shall be considered to have adopted a provision as authorized by paragraph (5) of subdivision (a) of Section 7132 and more specific wording shall not be required.

(b) This section shall not be construed as setting forth the exclusive method of adopting an article provision as authorized by paragraph (5) of subdivision (a) of section 7132.

SEC. 10. Section 7231 of the Corporations Code is amended to read:

7231. (a) A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and its members and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(b) In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;

(2) Counsel, independent accountants or other persons as to matters which the

director believes to be within such person's professional or expert competence; or

(3) A committee of the board upon which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence;

so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

(c) A person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge the person's obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which assets held by a corporation are dedicated. In addition, the liability of a director for monetary damages may be eliminated or limited in a corporation's articles to the extent provided in paragraph (5) of subdivision (a) of Section 7132.

SEC. 11. Section 7237 of the Corporations Code is amended to read:

7237. (a) For the purposes of this section, "agent" means any person who is or was a director, officer, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee or agent of a foreign or domestic corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and "expenses" includes without limitation attorneys' fees and any expenses of establishing a right to indemnification under subdivision (d) or paragraph (3) of subdivision (e).

(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation to procure a judgment in its favor, an action brought under Section 5233 of Part 2 (commencing with Section 5110) made applicable pursuant to Section 7238, or an action brought by the Attorney General or a person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust) by reason of the fact that such person is or was an agent of the corporation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

(c) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action by or in the right of the corporation, or brought under Section 5233 of Part 2 (commencing with Section 5110) made applicable pursuant to Section 7238, or brought by the Attorney General or a person granted relator status by the Attorney General for

breach of duty relating to assets held in charitable trust, to procure a judgment in its favor by reason of the fact that such person is or was an agent of the corporation, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith, in a manner such person believed to be in the best interests of the corporation and ~~with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances~~ its members. No indemnification shall be made under this subdivision for any of the following:

(1) In respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation in the performance of such person's duty to the corporation and its members, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses ~~which such~~ and then only to the extent that the court shall determine;

(2) Of amounts paid in settling or otherwise disposing of a threatened or pending action, ~~with or without court approval; or~~.

(3) Of expenses incurred in defending a ~~threatened or~~ pending action which is settled or otherwise disposed of without court approval unless such action concerns assets held in charitable trust and is settled with the approval of the Attorney General.

(d) To the extent that an agent of a corporation has been successful on the merits in defense of any proceeding referred to in subdivision (b) or (c) or in defense of any claim, issue or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

(e) Except as provided in subdivision (d), any indemnification under this section shall be made by the corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in subdivision (b) or (c), by any of the following:

(1) A majority vote of a quorum consisting of directors who are not parties to such proceeding;

(2) Approval of the members (Section 5034), with the persons to be indemnified not being entitled to vote thereon; ~~or~~.

(3) The court in which such proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney or other person is opposed by the corporation.

(f) Expenses incurred in defending any proceeding may be advanced by the corporation prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount ~~unless if~~ it shall be determined ultimately that the agent is not entitled to be indemnified as authorized in this section.

(g) ~~No provision made by a corporation to indemnify its or its subsidiary's directors or officers for the defense of any proceeding, whether contained in the articles, bylaws, a resolution of members or directors, an agreement or otherwise, shall be valid unless consistent with this section.~~ The indemnification provided by this section shall not be deemed exclusive of any additional rights to which those seeking indemnification for breach of duty to the corporation and its members while acting in the capacity of a director or officer of the corporation to the extent the additional rights to indemnification are authorized in an article provision adopted pursuant to paragraph (6)

of subdivision (a) of Section 7132. The indemnification provided by this section for acts, omissions, or transactions while acting in the capacity of, or while serving as, a director or officer of the corporation but not involving breach of duty to the corporation and its members shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any other statute or under any bylaw, agreement, vote of members or disinterested directors or otherwise, to the extent the additional rights to indemnification are authorized in the articles of the corporation. An article provision authorizing indemnification "in excess of that otherwise permitted by Section 7237" or "to the fullest extent permissible under California law" or the substantial equivalent thereof shall be construed to be both a provision for additional indemnification for breach of duty to the corporation and its members as referred to in, and with the limitations required by paragraph (6) of subdivision (a) of Section 7132 and a provision for additional indemnification as referred to in the second sentence of this subdivision. The rights to indemnity hereunder shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person. Nothing contained in this section shall affect any right to indemnification to which persons other than such the directors and officers may be entitled by contract or otherwise.

(h) No indemnification or advance shall be made under this section, except as provided in subdivision (d) or paragraph (3) of subdivision (e), in any circumstance where it appears:

(1) That it would be inconsistent with a provision of the articles, bylaws, a resolution of the members or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceedings in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(2) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

(i) A corporation shall have power to purchase and maintain insurance on behalf of any agent of the corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not the corporation would have the power to indemnify the agent against such liability under the provisions of this section. Without limitation, such insurance may be purchased as authorized by Section 5005.1.

(j) This section does not apply to any proceeding against any trustee, investment manager or other fiduciary of an employee benefit plan in such person's capacity as such, even though such person may also be an agent as defined in subdivision (a) of the employer corporation. A corporation shall have power to indemnify such trustee, investment manager or other fiduciary to the extent permitted by subdivision (f) of Section 207.

SEC. 12. Section 9132 of the Corporations Code is amended to read:

9132. (a) The articles of incorporation may set forth any or all of the following provisions, which shall not be effective unless expressly provided in the articles:

(1) A provision limiting the duration of the corporation's existence to a specified date.

(2) In the case of a subordinate corporation instituted or created under the authority of a head organization a provision setting forth either or both of the following:

(i) That the subordinate corporation shall dissolve whenever its charter is

surrendered to, taken away by, or revoked by the head organization granting it.

(ii) That in the event of its dissolution pursuant to an article provision allowed by subdivision (a), paragraph (2), clause (i), of this section, or, in the event of its dissolution for any reason, any assets of the corporation after compliance with the applicable provisions of Chapters 16 (commencing with Section 6610), and 17 (commencing with Section 6710) (made applicable pursuant to section 9680) shall be distributed to the head organization.

(3) A provision authorizing, whether by bylaw, agreement, or otherwise, the indemnification of agents (as defined in Section 9246) in excess of that expressly permitted by Section 9246, for those agents of the corporation for breach of duty to the corporation, provided, however, that the provision may not provide for any such excess indemnification of any director for any acts or omissions or transactions from which a director may not be relieved of liability as set forth in paragraph (a)(4), below.

(4) Provisions eliminating or limiting the personal liability of a director for monetary damages in an action brought by and in the right of the corporation for breach of the person's duties to the corporation, under Section 9241, provided, however, that (A) such a provision may not eliminate or limit the liability of a director (i) for acts or omissions that involve intentional misconduct or a knowing and culpable violation of law, (ii) for acts or omissions that a director believes to be contrary to the best interests of the corporation or that involve the absence of good faith on the part of the director, (iii) for any transaction from which a director derived an improper personal benefit, (iv) for acts or omissions that show a reckless disregard for the director's duty to the corporation in circumstances in which the director was aware, or should have been aware, in the ordinary course of performing a director's duties, of a risk of serious injury to the corporation, (v) for acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of the director's duty to the corporation, or (vi) under Sections 9243 or 9245(a) and (B) no such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.

(b) Nothing contained in subdivision (a) shall affect the enforceability, as between the parties thereto, of any lawful agreement not otherwise contrary to public policy.

(c) The articles of incorporation may set forth any or all of the following provisions:

(1) The names and addresses of the persons appointed to act as initial directors.

(2) The classes of members, if any, and if there are two or more classes, the rights, privileges, preferences, restrictions and conditions attaching to each class.

(3) A provision which would allow any member to have more or less than one vote in any election or other matter presented to the members for a vote.

(4) Any other provision not in conflict with law, for the management of the activities and for the conduct of the affairs of the corporation, including any provision which is required or permitted by this part to be stated in the bylaws.

SEC. 13. Section 9132.5 is added to the Corporations Code to read:

9132.5. (a) If the articles of a corporation include a provision reading substantially as follows: "The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law." the corporation shall

be considered to have adopted a provision as authorized by paragraph (4) of subdivision (c) of Section 9132 and more specific wording shall not be required.

(b) This section shall not be construed as setting forth the exclusive method of adopting an article provision as authorized by paragraph (4) of subdivision (a) of section 9132.

SEC. 14. Section 9241 of the Corporations Code is amended to read:

9241. (a) A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as is appropriate under the circumstances.

(b) In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;

(2) Counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence;

(3) A committee of the board upon which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence; or

(4) Religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented;

so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

(c) The provisions of this section, and not Section 9243, shall govern any action or omission of a director in regard to the compensation of directors, as directors or officers, or any loan of money or property to or guaranty of the obligation of any director or officer. No obligation, otherwise valid, shall be voidable merely because directors who benefited by a board resolution to pay such compensation or to make such loan or guaranty participated in making such board resolution.

(d) Except as provided in Section 9243, a person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge his or her obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat any purpose to which the corporation, or assets held by it, may be dedicated. In addition, the liability of a director for monetary damages may be eliminated or limited in a corporation's articles to the extent provided in paragraph (4) of subdivision (a) of Section 9132.

SEC. 15. Section 9241.5 is added to the Corporations Code to read:

9241.5. (a) Except as provided in this subdivision no person shall bring an action against a director or officer of a nonprofit corporation which is subject to this part or to similar laws of any other state, and which is exempt from taxation under section

501(c)(3) of the Internal Revenue Code, based on violation of the duties set forth in section 9241, 9243, or 9245, or based on any other act or omission by a person arising out of, or reasonably believed to be in the course of his or her capacity as a director or officer of a nonprofit corporation. This subdivision shall not apply to actions brought by:

(1) The corporation.

(2) A director of the corporation.

(3) An officer of the corporation.

(4) Unless otherwise provided in the articles or bylaws, a religious authority, including, but not limited to a minister, priest or rabbi, of the corporation, the general church of which the corporation is a member, or in the case of a subordinate corporation, a superior religious body.

(5) The Attorney General to the extent permitted by Section 9230.

(6) Any governmental agency pursuant to any other provision of law.

(b) Notwithstanding subdivision (a), if a person not listed in subdivision (a) otherwise has a claim against a director or officer of the corporation, but does not also have a similar claim against the corporation arising out of the transaction or occurrence that is the subject matter of the claim against the director or officer, then that person may bring an action against the director or officer.

(c) This section is not intended to protect an individual from liability for his or her acts taken outside the course and scope of his or her duties as an officer or director of a nonprofit religious corporation.

(d) In order to ensure a source of recovery for the claims against the corporation pursuant to subdivision (a), subdivision (a) shall apply only if the corporation maintains a liability insurance policy so that it has available coverage in at least the following amounts:

(1) If the corporation's annual budget is less than fifty thousand dollars (\$50,000), the minimum required amount shall be five hundred thousand dollars (\$500,000).

(2) If the corporation's annual budget equals or exceeds fifty thousand dollars (\$50,000), the minimum required amount shall be one million dollars (\$1,000,000).

Without limitation, insurance acquired pursuant to subdivision (b) of Section 5005.1 shall satisfy this requirement.

(e) Nothing in this section shall be deemed to excuse an insurer from its obligations to a corporation by reason of the release of liability of a director or officer pursuant to subdivision (a).

(f) This section shall apply only to causes of action arising on or after January 1, 1997. The enactment of this section shall not be considered in determining any person's liability for a cause of action which arose prior to January 1, 1997, nor shall the repeal of Sections 5047.5 and 9247, and Section 425.15 of the Code of Civil Procedure be taken into account in determining any person's liability for a cause of action which arose at any time.

SEC. 16. Section 9246 of the Corporations Code is amended to read:

9246. (a) For the purposes of this section, "agent" means any person who is or was a director, officer, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee or agent of a foreign or domestic corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and "expenses" includes without limitation attorneys' fees and any expenses of establishing a right to indemnification under subdivision (d) or paragraph (3) of subdivision (e).

(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation to procure a judgment in its favor, an action brought under Section 9243, or an action brought by the Attorney General pursuant to section 9230) by reason of the fact that such person is or was an agent of the corporation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person believed to be in the best interests of the corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

(c) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action by or in the right of the corporation, or brought under Section 9243, or brought by the Attorney General pursuant to Section 9230, to procure a judgment in its favor by reason of the fact that such person is or was an agent of the corporation, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith, in a manner in which such person believed to be in the best interests of the corporation ~~and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.~~ No indemnification shall be made under this subdivision ~~for any of the following:~~

(1) In respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation in the performance of such person's duty to the corporation, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses

~~which such to the extent that the court shall determine;~~

(2) Of amounts paid in settling or otherwise disposing of a threatened or pending action, ~~with or without court approval; or.~~

(3) Of expenses incurred in defending a ~~threatened or~~ pending action which is settled or otherwise disposed of without court approval unless it is settled with the approval of the Attorney General.

(d) To the extent that an agent of a corporation has been successful on the merits in defense of any proceeding referred to in subdivision (b) or (c) or in defense of any claim, issue or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

(e) Except as provided in subdivision (d), any indemnification under this section shall be made by the corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in subdivision (b) or (c), by any of the following:

(1) A majority vote of a quorum consisting of directors who are not parties to such proceeding;

(2) Approval of the members (Section 5034), with the persons to be indemnified not being entitled to vote thereon; ~~or.~~

(3) The court in which such proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney or other person is opposed by the corporation.

(f) Expenses incurred in defending any proceeding may be advanced by the corporation prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount ~~unless~~ if it shall be determined ultimately that the agent is not entitled to be indemnified as authorized in this section.

(g) ~~No provision made by a corporation to indemnify its or its subsidiary's directors or officers for the defense of any proceeding, whether contained in the articles, bylaws, a resolution of members or directors, an agreement or otherwise, shall be valid unless consistent with this section.~~ The indemnification provided by this section shall not be deemed exclusive of any additional rights to which those seeking indemnification for breach of duty to the corporation while acting in the capacity of a director or officer of the corporation to the extent the additional rights to indemnification are authorized in an article provision adopted pursuant to paragraph (3) of subdivision (a) of Section 9132. The indemnification provided by this section for acts, omissions, or transactions while acting in the capacity of, or while serving as, a director or officer of the corporation but not involving breach of duty to the corporation shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any other statute or under any bylaw, agreement, vote of members or disinterested directors or otherwise, to the extent the additional rights to indemnification are authorized in the articles of the corporation. An article provision authorizing indemnification "in excess of that otherwise permitted by Section 9246" or "to the fullest extent permissible under California law" or the substantial equivalent thereof shall be construed to be both a provision for additional indemnification for breach of duty to the corporation as referred to in, and with the limitations required by paragraph (3) of subdivision (a) of Section 9132 and a provision for additional indemnification as referred to in the second sentence of this subdivision. The rights to indemnity hereunder shall continue as to a person who has ceased to be a director, officer, employee, or agent

and shall inure to the benefit of the heirs, executors, and administrators of the person. Nothing contained in this section shall affect any right to indemnification to which persons other than such directors and officers may be entitled by contract or otherwise.

(h) No indemnification or advance shall be made under this section, except as provided in subdivision (d) or paragraph (3) of subdivision (e), in any circumstance where it appears ~~that~~:

(1) That it would be inconsistent with a provision of the articles, bylaws, a resolution of the members or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceedings in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(2) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

(i) A corporation shall have power to purchase and maintain insurance on behalf of any agent of the corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not the corporation would have the power to indemnify the agent against such liability under the provisions of this section; provided, however, that a corporation shall have no power to purchase and maintain such insurance to indemnify any agent of the corporation for a violation of Section 9243. Without limitation, such insurance may be purchased as authorized by Section 5005.1.

(j) This section does not apply to any proceeding against any trustee, investment manager or other fiduciary of an employee benefit plan in such person's capacity as such, even though such person may also be an agent as defined in subdivision (a) of the employer corporation. A corporation shall have power to indemnify such trustee, investment manager or other fiduciary to the extent permitted by subdivision (f) of Section 207.

SEC. 17. Section 12313 of the Corporations Code is amended to read:

12313. (a) The articles of incorporation may set forth any or all of the following provisions, which shall not be effective unless expressly provided in the articles:

(1) A provision limiting the duration of the corporation's existence to a specified date.

(2) A provision providing for the distribution of the remaining assets of the corporation, after payment or adequate provision for all of its debts and liabilities, to a charitable trust.

(b) Nothing contained in subdivision (a) shall affect the enforceability, as between the parties thereto, of any lawful agreement not otherwise contrary to public policy.

(c) The articles of incorporation may set forth any or all of the following provisions:

(1) The names and addresses of the persons appointed to act as initial directors.

(2) Provisions concerning the transfer of membership, in accordance with section 12410.

(3) The classes of members, if any, and if there are two or more classes, the rights, privileges, preferences, restrictions and conditions attaching to each class.

(4) Any other provision not in conflict with law, for the management of the

activities and for the conduct of the affairs of the corporation, including any provision which is required or permitted by this part to be stated in the bylaws.

(5) A provision conferring upon members the right to determine the consideration for which memberships shall be issued.

(6) Provisions eliminating or limiting the personal liability of a director for monetary damages in an action brought by or in the right of the corporation for breach of the person's duties to the corporation and its members under Section 12371, provided, however, that (A) such a provision may not eliminate or limit the liability of a director (i) for acts or omissions that involve intentional misconduct or a knowing and culpable violation of law, (ii) for acts or omissions that a director believes to be contrary to the best interests of the corporation or its members or that involve the absence of good faith on the part of the director, (iii) for any transaction from which a director derived an improper personal benefit, (iv) for acts or omissions that show a reckless disregard for the director's duty to the corporation or its members in circumstances in which the director was aware, or should have been aware, in the ordinary course of performing a director's duties, of a risk of serious injury to the corporation or its members, (v) for acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of the director's duty to the corporation or its members, or (vi) under Sections 12373 or 12376(a), (B) no such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective, and (C) no such provision shall eliminate or limit the liability of an officer for any act or omission as an officer, notwithstanding that the officer is also a director or that his or her actions, if negligent or improper, have been ratified by the directors.

(7) A provision authorizing, whether by bylaw, agreement, or otherwise, the indemnification of agents (as defined in Section 12377) in excess of that expressly permitted by Section 12377, for those agents of the corporation for breach of duty to the corporation and its members, provided, however, that the provision may not provide for any such excess indemnification of any director for any acts or omissions or transactions from which a director may not be relieved of liability as set forth in paragraph (6), above.

SEC. 18. Section 12313.5 is added to the Corporations Code to read:

12313.5. (a) If the articles of a corporation include a provision reading substantially as follows: "The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law." the corporation shall be considered to have adopted a provision as authorized by paragraph (6) of subdivision (a) of Section 12313 and more specific wording shall not be required.

(b) This section shall not be construed as setting forth the exclusive method of adopting an article provision as authorized by paragraph (6) of subdivision (a) of section 12313.

SEC. 19. Section 12371 of the Corporations Code is amended to read:

12371. (a) A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and its members and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(b) In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;

(2) Counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence; or

(3) A committee of the board upon which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence;

so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

(c) A person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge the person's obligations as a director. In addition, the liability of a director for monetary damages may be eliminated or limited in a corporation's articles as provided in paragraph (6) of subdivision (c) of Section 12313.

SEC. 20. Section 12377 of the Corporations Code is amended to read:

12377. (a) For the purposes of this section, "agent" means any person who is or was a director, officer, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee or agent of a foreign or domestic corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and "expenses" includes without limitation attorneys' fees and any expenses of establishing a right to indemnification under subdivision (d) or paragraph (3) of subdivision (e).

(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation to procure a judgment in its favor) by reason of the fact that such person is or was an agent of the corporation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

(c) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action by or in the right of the corporation, to procure a judgment in its favor by reason of the fact that such person is or was an agent of the corporation, against expenses actually and reasonably incurred by such person in connection with the defense or

settlement of such action if such person acted in good faith, in a manner such person believed to be in the best interests of the corporation and ~~with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances its members.~~ ~~No~~

No indemnification shall be made under this subdivision for any of the following:

(1) In respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation in the performance of such person's duty to the corporation and its members, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses which such court shall determine;

(2) Of amounts paid in settling or otherwise disposing of a ~~threatened or pending~~ action, ~~with or without court approval; or.~~

(3) Of expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval.

(d) To the extent that an agent of a corporation has been successful on the merits in defense of any proceeding referred to in subdivision (b) or (c) or in defense of any claim, issue or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

(e) Except as provided in subdivision (d), any indemnification under this section shall be made by the corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in subdivision (b) or (c), by any of the following:

(1) A majority vote of a quorum consisting of directors who are not parties to such proceeding;

(2) Approval of the members (Section 12224), with the persons to be indemnified not being entitled to vote thereon; ~~or.~~

(3) The court in which such proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney or other person is opposed by the corporation.

(f) Expenses incurred in defending any proceeding may be advanced by the corporation prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount ~~unless~~ if it shall be determined ultimately that the agent is not entitled to be indemnified as authorized in this section.

~~(g) No provision made by a corporation to indemnify its or its subsidiary's directors or officers for the defense of any proceeding, whether contained in the articles, bylaws, a resolution of members or directors, an agreement or otherwise, shall be valid unless consistent with this section. The indemnification provided by this section shall not be deemed exclusive of any additional rights to which those seeking indemnification for breach of duty to the corporation and its members while acting in the capacity of a director or officer of the corporation to the extent the additional rights to indemnification are authorized in an article provision adopted pursuant to paragraph (7) of subdivision (a) of Section 12313. The indemnification provided by this section for acts, omissions, or transactions while acting in the capacity of, or while serving as, a director or officer of the corporation but not involving breach of duty to the corporation and its members shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any other statute or under any bylaw,~~

agreement, vote of members or disinterested directors or otherwise, to the extent the additional rights to indemnification are authorized in the articles of the corporation. An article provision authorizing indemnification "in excess of that otherwise permitted by Section 12377" or "to the fullest extent permissible under California law" or the substantial equivalent thereof shall be construed to be both a provision for additional indemnification for breach of duty to the corporation and its members as referred to in, and with the limitations required by paragraph (7) of subdivision (a) of Section 12313 and a provision for additional indemnification as referred to in the second sentence of this subdivision. The rights to indemnity hereunder shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person. Nothing contained in this section shall affect any right to indemnification to which persons other than ~~such~~ the directors and officers may be entitled by contract or otherwise.

(h) No indemnification or advance shall be made under this section, except as provided in subdivision (d) or paragraph (3) of subdivision (e), in any circumstance where it appears:

(1) That it would be inconsistent with a provision of the articles, bylaws, a resolution of the members or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceedings in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; ~~or.~~

(2) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

(i) A corporation shall have power to purchase and maintain insurance on behalf of any agent of the corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not the corporation would have the power to indemnify the agent against such liability under the provisions of this section. The fact that a corporation owns all or a portion of the shares of the company issuing a policy of insurance shall not render this subdivision inapplicable if either of the following conditions are satisfied: (1) any policy issued is limited to the extent provided by paragraph (7) of subdivision (c) of Section 12313, or (2)(A) the company issuing the insurance policy is organized, licensed, and operated in a manner that complies with the insurance laws and regulations applicable to its jurisdiction of organization, (B) the company issuing the policy provides procedures for processing claims that do not permit that company to be subject to the direct control of the corporation that purchased that policy, and (C) the policy issued provides for some manner of risk sharing between the issuer and purchaser of the policy, on one hand, and some unaffiliated person or persons, on the other, such as by providing for more than one unaffiliated owner of the company issuing the policy or by providing that a portion of the coverage furnished will be obtained from some unaffiliated insurer or reinsurer.

(j) This section does not apply to any proceeding against any trustee, investment manager or other fiduciary of an employee benefit plan in such person's capacity as such, even though such person may also be an agent as defined in subdivision (a) of the employer corporation. A corporation shall have power to indemnify such trustee, investment manager or other fiduciary to the extent permitted by subdivision (f) of Section 207.

SEC. 21. Section 24001.6 is added to the Corporations Code to read:

24001.6. (a) Except as provided in this subdivision, no person shall bring an action against a director or officer of a nonprofit association, which is defined in Section 21000, and which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, based on a violation of the duties of that person or based on any other act or omission by the officer or director, if the violation of the duties or other act or omission occurred while the director or officer was acting in, or reasonably believed he or she was acting in his or her capacity as a director or officer of the nonprofit association, and occurred in the exercise of his or her policymaking judgment. This subdivision shall not apply to actions brought by:

- (1) The association, or a member pursuant to a members' derivative action.
 - (2) A director of the association.
 - (3) An officer of the association.
 - (4) The Attorney General or any person granted relator status by the Attorney General.
 - (5) If the nonprofit association is a religious association, and unless otherwise provided in the articles or bylaws, a religious authority, including, but not limited to a minister, priest or rabbi, of the association, the general church of which the association is a member, or in the case of a subordinate association, a superior religious body.
 - (6) Any governmental agency pursuant to any other provision of law.
- (b) Notwithstanding subdivision (a), if a person not listed in subdivision (a) otherwise has a claim against a director or officer of the association but does not also have a similar claim against the association arising out of the transaction or occurrence that is the subject matter of the claim against the director or officer, then that person may bring an action on the claim against the director or officer.
- (c) This section is not intended to protect an individual from liability for his or her acts taken outside the course and scope of his or her duties as an officer or director of a nonprofit association.
- (d) In order to ensure a source of recovery for the claims against the association pursuant to subdivision (a), subdivision (a) shall apply only if the association maintains a liability insurance policy so that it has available coverage in at least the following amounts:
- (1) If the association's annual budget is less than fifty thousand dollars (\$50,000), the minimum required amount shall be five hundred thousand dollars (\$500,000).
 - (2) If the association's annual budget equals or exceeds fifty thousand dollars (\$50,000), the minimum required amount shall be one million dollars (\$1,000,000).

(e) Nothing in this section shall be deemed to excuse an insurer from its obligations to an association by reason of the release of liability of a director or officer pursuant to subdivision (b).

(f) This section shall apply only to causes of action arising on or after January 1, 1997. The enactment of this section shall not be taken into account in determining a person's liability for a cause of action which arose prior to January 1, 1997.